

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Galen Baynes	Team: Team # 4	CCRB Case #: 201206794	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/26/2012 9:22 PM	Location of Incident: East New York Avenue between East 98th Street and Rockaway Parkway	Precinct: 77	18 Mo. SOL 11/26/2013	EO SOL 11/26/2013	
Date/Time CV Reported Sun, 05/27/2012 11:28 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 05/27/2012 11:28 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Sher	07435	951244	067 PCT
2. SGT Colin Austin	00186	921131	PBBS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Konstantin Rakhmanov	08005	951109	070 PCT
2. POM Myles Mckenna	24424	950868	072 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Sher	Abuse: PO Michael Sher threatened to arrest § 87(2)(b)	
B.SGT Colin Austin	Abuse: Sgt. Colin Austin threatened to arrest § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

On May 27, 2012, § 87(2)(b) filed this complaint online via the CCRB's website on behalf of her brother, § 87(2)(b) (encl. 4a-e). § 87(2)(b) witnessed the incident described in the complaint.

At approximately 9:22 p.m. on May 26, 2012, PO Michael Sher and PO Konstantin Rakhmanov stopped § 87(2)(b)'s vehicle on East New York Avenue between East 98th Street and Rockaway Parkway in Brooklyn. The following allegations resulted:

- **Allegation A – Abuse of Authority: PO Michael Sher threatened to arrest** § 87(2)(b)
§ 87(2)(b)
- **Allegation B – Abuse of Authority: Sgt. Colin Austin threatened to arrest** § 87(2)(b)
§ 87(2)(b)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- § 87(4-b), § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Results of Investigation

Civilian Statements

Complainant/Witness: § 87(2)(b)

- § 87(2)(b) is a 5'7" tall, 150-pound black female with brown hair and brown eyes. At the time of the incident, § 87(2)(b) was § 87(2)(b) old.

CCRB Statement:

§ 87(2)(b) was interviewed at the CCRB on July 5, 2012 (encl. 8a-f).

At approximately 9:22 p.m. on May 26, 2013, § 87(2)(b) was riding in the passenger seat of a black Toyota Camry which was being driven by her brother, § 87(2)(b) § 87(2)(b)'s godson, § 87(2)(b), goddaughter, § 87(2)(b), and nephew, § 87(2)(b) were also in the car.

§ 87(2)(b) made a left turn from Buffalo Avenue onto East New York Avenue in Brooklyn. § 87(2)(b) stopped the vehicle behind five other cars that were waiting for a traffic light to change. Two uniformed male officers, PO Michael Sher and PO Konstantin Rakhmanov of the 67th Precinct, then approached the passenger side of the vehicle on foot.

§ 87(2)(b) described PO Sher as a 5'8" tall, white male with an average build, in his mid-30s, wearing a uniform, on foot, with shield number 7435. PO Sher provided his last name and shield number to § 87(2)(b). § 87(2)(b) described PO Rakhmanov as a 5'7" or 5'8" tall, 30-year-old white male with a small build, in uniform, on foot, with shield number 8005. PO Rakhmanov provided his last name and shield number to § 87(2)(b).

Upon approaching the vehicle, PO Sher asked § 87(2)(b) to turn off the engine and present his driver's license. § 87(2)(b) then handed his driver's license and registration to § 87(2)(b) who passed the documents to PO Sher. PO Sher asked § 87(2)(b) to pull his vehicle to the side of the road, and § 87(2)(b) did so. § 87(2)(b) then asked PO Sher what the vehicle was stopped for. PO Sher stated that the vehicle was stopped for a failure to signal a right turn. Initially, § 87(2)(b) and § 87(2)(b) disputed this claim, stating that § 87(2)(b) had turned left onto East New York Avenue and that he had signaled the turn.

PO Sher then asked § 87(2)(b) to turn on his left turn signal. § 87(2)(b) complied. PO Sher then asked § 87(2)(b) to exit his vehicle in order to observe that his left turn signal was broken and that the light was not flashing. § 87(2)(b) stated that she would exit the car in § 87(2)(b)'s place. § 87(2)(b) exited the vehicle and observed that the left turn signal was broken. § 87(2)(b) then returned to her seat on the passenger side of the vehicle.

After several minutes, PO Sher approached the driver's side of the vehicle again. PO Sher was holding a machine, and told § 87(2)(b) to roll down the vehicle's rear windows. § 87(2)(b) asked PO Sher why. PO Sher then responded: "Just do what I say or we can all go down to the precinct." § 87(2)(b) refused to roll down the rear windows of the vehicle, and told PO Sher to issue a ticket for the broken turn signal and allow him to leave the scene.

PO Sher then walked away from the vehicle and requested additional units from a radio that was strapped to his shoulder. Meanwhile, § 87(2)(b) used her cell phone to call her mother, § 87(2)(b) and asked her to come to the scene of the incident. Shortly thereafter, a patrol van arrived on the scene. Two male officers in uniform, identified by the investigation as Sgt. Colin Austin and PO Myles McKenna of the 67th Precinct, exited the patrol van.

§ 87(2)(b) described Sgt. Austin as a black male with a medium build, in this late 30s, with stubble and reading glasses, and shield number 187. Sgt. Austin provided § 87(2)(b) with his last name and shield number. § 87(2)(b) described PO McKenna as a white male in his mid-30s, with a slim build, in uniform. § 87(2)(b) did not ask PO McKenna for his name or shield number.

Upon arriving at the scene, Sgt. Austin spoke with PO Sher. Sgt. Austin and PO McKenna then approached the driver's side of the vehicle. Sgt. Austin leaned into the driver's side window and told § 87(2)(b) that if he did not provide PO Sher with the requested information, he would be taken to jail. § 87(2)(b) asked Sgt. Austin what § 87(2)(b) would be arrested for. Sgt. Austin then shouted that § 87(2)(b) had to provide whatever information was requested of him. § 87(2)(b) asked Sgt. Austin repeatedly why PO Sher wanted to take a reading of the tint on the vehicle's windows. Sgt. Austin responded that, as § 87(2)(b) was not the driver of the vehicle, he did not have to answer her questions. During the interaction between Sgt. Austin and § 87(2)(b) PO McKenna was standing behind Sgt. Austin with his hand resting on the holster of his gun.

§ 87(2)(b)'s mother, § 87(2)(b) then arrived on the scene in a vehicle with § 87(2)(b)'s stepfather, § 87(2)(b), and her sister, § 87(2)(b). § 87(2)(b) and § 87(2)(b) approached § 87(2)(b)'s vehicle from the driver's side. § 87(2)(b) asked PO McKenna why his hand was on the holster of his gun considering that there were children in the car, to which PO McKenna responded: "Like they (the children) never saw violence before."

PO Sher, who was standing at the passenger window of § 87(2)(b)'s vehicle, then repeated that if § 87(2)(b) did not roll down the rear windows of the vehicle, he would be taken to the precinct. § 87(2)(b) continued to argue with PO Sher until § 87(2)(b) told § 87(2)(b) to "shut up." Sgt. Austin then shouted that § 87(2)(b) and § 87(2)(b) had to do whatever he asked of them, and then returned to the patrol van.

§ 87(2)(b) exited the vehicle and approached the patrol van. She asked Sgt. Austin for his name and shield number, which she obtained. § 87(2)(b) then got into § 87(2)(b)'s vehicle with the three children, and they left the scene of the incident. § 87(2)(b) and § 87(2)(b) were still at the scene of the incident when § 87(2)(b) left.

Victim: § 87(2)(b)

- § 87(2)(b) is a black male who was § 87(2)(b) old at the time of the incident.

Phone Statement:

§ 87(2)(b) provided the following statement to the CCRB by phone on June 8, 2012. (encl.7a-b)

On May 26, 2012 at approximately 9:30 p.m., § 87(2)(b) left his home § 87(2)(b) in Brooklyn in a vehicle. § 87(2)(b) was accompanied by his son, his sister § 87(2)(b) his nephew, and two of his cousins. § 87(2)(b) intended to drop off § 87(2)(b) his nephew, and his cousins at § 87(2)(b)'s home. § 87(2)(b) was the driver of the vehicle.

§ 87(2)(b) drove down East 98th Street in Brooklyn. At an unspecified cross-street, § 87(2)(b) engaged his turn signal and made a left-hand turn. He then stopped the vehicle behind another car, as traffic was not moving. After § 87(2)(b) stopped, a male officer approached the vehicle. § 87(2)(b) described PO1 as a white male, in uniform, wearing a hat, clean-shaven, and with an average build. The investigation later identified PO1 as PO Michael Sher of the 67th Precinct.

PO Sher asked § 87(2)(b) for his license and registration. § 87(2)(b) asked PO Sher if he could pull over to the side of the road. PO Sher asked § 87(2)(b) to provide his license and registration first. § 87(2)(b) gave PO Sher his driver's license. § 87(2)(b) then pulled his vehicle to the side of the road.

PO Sher asked § 87(2)(b) if he knew why he had been stopped. § 87(2)(b) responded that he did not know why he had been stopped. PO Sher stated that § 87(2)(b) had failed to engage his turn signal while making a right turn. § 87(2)(b) stated that he had not made a right turn, but rather, a left turn. PO Sher and § 87(2)(b) argued about whether or not he had made a right turn. At this point, a second officer approached the vehicle. § 87(2)(b) could not provide a physical description of PO2. The investigation later identified PO2 as PO Konstantin Rakhmanov of the 67th Precinct.

PO Sher then stated that § 87(2)(b) had made a left turn, but that he had failed to signal the left turn. PO Sher said that § 87(2)(b) was lying about signaling the left turn. § 87(2)(b) responded that PO Sher was being disrespectful. PO Sher then shined his flashlight into the vehicle. § 87(2)(b) asked PO Sher why he was shining his flashlight into the vehicle. PO Sher became upset and called for backup. PO Sher also stated that he was going to check the tint on the vehicle's windows.

PO Sher then retrieved a tool used to test the tint level of windows, and approached § 87(2)(b)'s vehicle again. PO Sher asked § 87(2)(b) to roll down the rear windows of the vehicle. § 87(2)(b) refused to do so.

Several minutes later, two additional male officers arrived on the scene. § 87(2)(b) described PO3 as a black male, in uniform, who identified himself as a sergeant. The investigation later identified PO3 as Sgt. Colin Austin of the 67th Precinct. § 87(2)(b) could not describe PO4. The investigation later identified PO4 as PO Myles McKenna of the 67th Precinct.

Upon arriving at the scene, Sgt. Austin and PO McKenna approached § 87(2)(b)'s vehicle. Sgt. Austin then told § 87(2)(b) that he was going to be arrested for OGA if he did not comply with the officers' request to allow them to check the tint level on the windows. § 87(2)(b) asked Sgt. Austin what he meant by OGA, and Sgt. Austin responded that § 87(2)(b) was "messing up" PO Sher's investigation. § 87(2)(b) asked Sgt. Austin again what he would be arrested for.

At this point, § 87(2)(b)'s parents arrived on the scene. § 87(2)(b)'s parents had been called by his sister, § 87(2)(b). The children that were riding in § 87(2)(b)'s vehicle exited the vehicle and left the scene with § 87(2)(b)'s parents. § 87(2)(b) remained on the scene with § 87(2)(b).

§ 87(2)(b) was then issued three summonses – § 87(2)(b). § 87(2)(b) was not arrested as a result of the incident.

Attempts to Contact Civilians

- § 87(2)(b) Attempts to contact § 87(2)(b) by phone were made on May 30, 2012, June 4, 2012, and June 6, 2012. A voicemail message was recorded in each instance. § 87(2)(b) contacted the CCRB on June 8, 2012, and scheduled an appointment for June 28, 2012. § 87(2)(b) did not appear for his interview on June 28, 2012. A phone call was made to § 87(2)(b) and a missed appointment letter was sent on June 28, 2012. § 87(2)(b) was contacted by phone on July 24, 2012 and July 25, 2012. On July 25, 2012, § 87(2)(b) chose to mediate this complaint.

NYPD Statements:

Subject Officer: PO MICHAEL SHER

- *PO Michael Sher is 5'8" tall, 180-pound white male with black hair and blue eyes. At the time of the incident, PO Sher was § 87(2)(b) old.*
- *On May 26, 2012, PO Sher of the 67th Precinct worked between the hours of 3 p.m. and 11:35 p.m. He was in uniform and assigned to foot patrol. PO Sher was working with PO Konstantin Rakhmanov.*

Memo Book:

At 9:45 p.m., PO Sher stopped § 87(2)(b)'s vehicle on the west-bound East New York intersection of Rockaway Parkway. The reason for the stop was a failure to signal a left turn. The rear passenger and driver side windows had a 15% tint. PO Sher noted that the vehicle was blue, 2003 model, with plate number § 87(2)(b). At 10:04 p.m. § 87(2)(b) received three summonses: § 87(2)(b), § 87(2)(b), § 87(2)(b).

CCRB Testimony:

PO Sher was interviewed at the CCRB on August 27, 2013 (encl. 10a-c).

At approximately 9:45 p.m. on May 26, 2012, PO Michael Sher was on foot and accompanied by his partner, PO Konstantin Rakhmanov, on East New York Avenue. PO Sher and PO Rakhmanov were in the middle of the block between East 98th Street and Rockaway Parkway. PO Sher and PO Rakhmanov observed a vehicle traveling north-bound on East 98th Street make a left turn, which the driver failed to signal with his vehicle's left blinker. Originally, this was the only violation for which PO Sher pulled the vehicle over.

PO Sher and PO Rakhmanov then signaled for the vehicle to pull over. The vehicle pulled over immediately. As they approached the vehicle, PO Sher observed four children in the

back seat of the vehicle, which was a sedan. PO Sher also observed a male driver and a female passenger, identified by the investigation as § 87(2)(b) and § 87(2)(b) respectively.

PO Sher approached the driver's side of the vehicle. He did not observe any of the occupants of the vehicle making movements as he approached the vehicle. He then informed § 87(2)(b) that he had stopped the vehicle because of a failure to signal a left turn. PO Sher asked § 87(2)(b) for his license and registration. § 87(2)(b) provided the requested documents. At this point, § 87(2)(b) did not make any statements. However, § 87(2)(b) began yelling and screaming, and stated that the vehicle stop was a result of racial discrimination. PO Sher did not recall § 87(2)(b) using profanity.

PO Sher explained the reason for the vehicle stop again, and then asked § 87(2)(b) to put on his left turn signal. PO Sher then told § 87(2)(b) to step out of the car and observe the left blinker, which was broken and was not flashing. § 87(2)(b) then stated that, because § 87(2)(b) is black, she did not want him to exit the vehicle, because PO Sher and PO Rakhmanov are white. § 87(2)(b) stated that she would get out of the vehicle instead. PO Sher did not recall whether § 87(2)(b) exited the vehicle. PO Sher did not order anyone else out of the vehicle.

After observing that the left blinker was not working, PO Sher and PO Rakhmanov issued a summons to § 87(2)(b). PO Sher also noticed that the rear windows of the vehicle were excessively tinted. PO Sher asked § 87(2)(b) several times to roll down the rear windows in order that PO Sher could take a reading of the tints. § 87(2)(b) refused to do so. PO Sher then said: "I'm giving you a lawful order and you have to follow it, otherwise you will be arrested."

§ 87(2)(b) continued to refuse to roll down the rear windows of the vehicle, so PO Sher called Sgt. Colin Austin and requested his presence on the scene. Sgt. Austin arrived on the scene and repeated PO Sher's orders to § 87(2)(b) at which point § 87(2)(b) rolled down the rear windows of the vehicle. PO Sher took a reading of the tint on the rear windows, and issued a summons for excessive tint.

PO Sher did not recall whether he stated at any point during the incident: "Just do what I say or you can all go down to the precinct." PO Sher did not recall whether any other officer present at the scene stated: "Just do what I say or you can all go down to the precinct."

PO Sher stated that he remembered three officers being present at the scene of the incident: himself, PO Rakhmanov, and Sgt. Austin. PO Sher did not remember who the driver of the vehicle in which Sgt. Austin arrived was.

Subject Officer: SGT COLIN AUSTIN

- *Sgt. Austin is 5'8" tall, 185-pound black male with black hair and brown eyes. At the time of the incident, Sgt. Austin was § 87(2)(b) old.*
- *On May 26, 2012, Sgt. Austin, who was assigned to the 67th Precinct at the time of the incident but is now assigned to the Patrol Borough Brooklyn South Investigations Unit, worked between the hours of 3:50-11:45 p.m. He was in uniform and assigned as the 67th Precinct impact sergeant in a marked police vehicle. Sgt. Austin was unable to recall who his partner was on this day.*

Memo Book:

Sgt. Austin did not have a memo book entry relating to this incident.

CCRB Testimony:

Sgt. Austin was interviewed at the CCRB on September 11, 2013 (encl. 11a-h).

On May 26, 2012, at approximately 9:15 p.m., Sgt. Colin Austin was conducting a vehicle safety checkpoint at an unspecified location in the 67th Precinct. Sgt. Austin then received a call either over the radio or on his cell phone from PO Michael Sher, who requested Sgt. Austin's presence for a vehicle stop on East New York Avenue between East 98th Street and Rockaway Parkway.

Sgt. Austin responded to the scene, where PO Sher explained that the driver of the vehicle that had been stopped was refusing to provide the documentation that PO Sher had requested from him. Sgt. Austin observed a driver and passenger seated in the front of the vehicle, and children in the back seat. The driver and passenger were identified by the investigation as § 87(2)(b) and § 87(2)(b) respectively. All of the individuals were seated inside of the car. Sgt. Austin noted that the individual in the passenger's seat was upset during the incident. However, he could not provide a description of this passenger.

Sgt. Austin approached the driver's side of the vehicle. § 87(2)(b)'s window was partially down, and Sgt. Austin explained to § 87(2)(b) through the open window that if he refused to provide the documentation requested by PO Sher he would be placed under arrest. Sgt. Austin stated that § 87(2)(b) may in fact have been refusing to roll down his windows in order that PO Sher could take a reading of the tint level. In informing § 87(2)(b) that he could be arrested if he refused to provide PO Sher with the information he requested, Sgt. Austin did not remember specifically saying: "If you do not give your information to PO Sher, you're going to jail." Sgt. Austin told § 87(2)(b) that, in the context of a vehicle stop, he was required to provide his license and registration upon request from the police.

Sgt. Austin could not recall whether § 87(2)(b) was refusing to provide documentation or refusing to roll down the windows of the vehicle. Sgt. Austin had to explain the situation to § 87(2)(b) at least two times before he provided the requested information (or rolled down the windows). § 87(2)(b) then provided the documentation (or rolled down the windows of the vehicle), as PO Sher had earlier requested. PO Sher then issued § 87(2)(b) a summons for excessively tinted windows.

During the incident, Sgt. Austin noted that § 87(2)(b) was very upset that he was being stopped. § 87(2)(b) made statements including: "Why don't you go out and fight real crime?" "Why don't you do real police work?" "You're harassing people in the community for no reason." After expressing his dissatisfaction with being stopped, § 87(2)(b) asked Sgt. Austin and PO Sher for their names and badge numbers. Sgt. Austin and PO Sher immediately provided this information to § 87(2)(b).

Sgt. Austin then left the scene of the incident and returned to the vehicle safety checkpoint. Sgt. Austin could not recall the exact location of the vehicle safety checkpoint.

Sgt. Austin could not recall if there were other officers on the scene in addition to PO Sher. He did not remember any of the occupants exiting the vehicle during the incident, nor could he recall whether any of the other occupants of the vehicle apart from the individual in the passenger seat made any comments during the incident. Sgt. Austin did not recall any other officer present on the scene saying: "Do what I say or we'll all go down to the precinct."

Witness Officer: PO KONSTANTIN RAKHMANOV

- *PO Konstantin Rakhmanov is a 5'9" tall, 170-pound white male with black hair and brown eyes. At the time of the incident, PO Rakhmanov was § 87(2)(b) old.*
- *On May 26, 2012, PO Rakhmanov, now of the 70th precinct, worked between the hours of 3 p.m. and 11:35 p.m. He was in uniform and assigned to the 67th precinct's foot patrol. PO Rakhmanov was working with PO Michael Sher of the same command.*

Memo Book:

At 9:45 p.m., PO Rakhmanov backed up PO Michael Sher on a car stop on East New York Avenue at the corner of East 98th Street.

CCRB Testimony:

PO Rakhmanov was interviewed at the CCRB on August 27, 2013 (encl. 12a-f).

On May 26, 2012, at approximately 9:45 p.m., PO Rakhmanov and PO Sher were on East New York Avenue. PO Rakhmanov and PO Sher observed a vehicle traveling north-bound on East 98th Street make a left turn onto East New York Avenue. The driver of the vehicle did not use a turn signal to make the left turn.

PO Rakhmanov and PO Sher then signaled for the vehicle to pull over. The vehicle was pulled over because of the failure to signal a left turn. Failure to signal a left turn was the only violation for which the vehicle was pulled over. The driver of the vehicle pulled over immediately after the officers signaled for him to do so.

PO Rakhmanov and PO Sher approached the vehicle. PO Rakhmanov approached the passenger-side window. PO Rakhmanov observed a male driver, a female passenger, and an unspecified number of children in the back seat vehicle. PO Rakhmanov referred to the driver of the vehicle as “the driver” and to the passenger as “the passenger” throughout his interview. The investigation later identified the driver as § 87(2)(b) and the passenger as § 87(2)(b).

PO Sher requested § 87(2)(b)'s identification. PO Rakhmanov believes that § 87(2)(b) provided his identification to PO Sher. At this point, § 87(2)(b) became irate and asked the officers why the vehicle had been pulled over. § 87(2)(b) did not make any statements. The officers explained why the vehicle stop had been made. PO Sher then asked the driver to exit the vehicle in order to observe the left turn signal, which was broken and not blinking. When PO Sher asked § 87(2)(b) to exit the vehicle, § 87(2)(b) stated (in reference to § 87(2)(b)) “No, he’s not going to come out of the vehicle.” The officers asked § 87(2)(b) why she didn’t want § 87(2)(b) to exit the vehicle. She stated: “Because he’s black and you’re white. I’m going to come out of the vehicle instead.”

The officers then told § 87(2)(b) that, as § 87(2)(b) was the individual that would receive the summons, it was § 87(2)(b) that should observe the traffic infraction. § 87(2)(b) then exited the vehicle and observed that the left turn signal on the vehicle was not working. § 87(2)(b) continued to speak angrily to the officers. PO Rakhmanov did not remember whether § 87(2)(b) exited the vehicle at any point. Because of § 87(2)(b)'s behavior, the officers requested that a sergeant be sent to the scene of the incident. Shortly thereafter, Sgt. Colin Austin arrived on the scene.

PO Sher then requested that § 87(2)(b) roll down the rear windows of the vehicle in order that he could take a reading of the tint on the windows. § 87(2)(b) did not comply. PO Sher then told § 87(2)(b) that if he refused to comply with a lawful order, he could be placed under arrest.

PO Rakhmanov described § 87(2)(b) as irate, impatient, angry, upset and loud throughout the duration of the incident. He remembers that she made statements including: “I have kids in the car. I’ve just got to get home.” “I’ve got a bunch of other things to do.” “You only stopped us because we’re black.” “We don’t need this.” “We don’t deserve this.” PO Rakhmanov also stated that she continuously interrupted the investigation, and that she would interrupt § 87(2)(b) whenever he attempted to speak to the officers by saying: “Shut up. Don’t talk. I’ll answer.”

PO Rakhmanov and PO Sher did not use profanity at any point during the incident. PO Rakhmanov could not recall whether § 87(2)(b) or passenger used profanity during the incident. PO Rakhmanov did not recall if at any point he said: “Just do what I say or you can all

go down to the precinct.” He also did not recall if at any point any other officer said: “Just do what I say or you can all go down to the precinct.”

NYPD Document(s)

- **Roll Call:** The Tour 3 roll call from the 67th Precinct on May 26, 2012, confirms that Sgt. Colin Austin, PO Michael Sher, and PO Konstantin Rakhmanov were on duty on the date and time of the incident. (encl. 14a-m)

Civilian(s) CCRB History

- § 87(2)(b) has filed the following CCRB complaints:

§ 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]

Subject Officer(s) CCRB History

- PO Michael Sher has been a member of the service for 2 years and there are no substantiated CCRB allegations against him (encl. 1a).
- Sgt. Colin Austin has been a member of the service for 15 years and there are no substantiated CCRB allegations against him (encl. 1b-c).

Conclusion

Identification of Subject Officer(s)

- PO Michael Sher and Sgt. Colin Austin acknowledged interacting with § 87(2)(b)

Investigative Findings and Recommendations

- **Allegation A – Abuse of Authority: PO Michael Sher threatened to arrest** § 87(2)(b)
- **Allegation B – Abuse of Authority: SGT Colin Austin threatened to arrest** § 87(2)(b)

It is undisputed that PO Sher and Sgt. Austin threatened to arrest § 87(2)(b) and that § 87(2)(b) refused to roll down the rear windows of his vehicle despite being instructed to do so. § 87(2)(b) stated that PO Sher asked him to roll down the rear windows of his vehicle in order that PO Sher could take a measurement of the tint, and that he refused to do so. § 87(2)(b) also stated that Sgt. Austin told him that he would be arrested for obstruction of governmental administration if he refused to roll down his rear windows. § 87(2)(b) also stated that both PO Sher and Sgt. Austin asked § 87(2)(b) to roll down the rear windows of his vehicle, and that he refused to do so, at which point PO Sher and Sgt. Austin threatened to arrest § 87(2)(b).

PO Sher stated that he asked § 87(2)(b) several times to roll down the rear windows of his vehicle in order that PO Sher could take a reading of the tints, and that § 87(2)(b) refused to do so. PO Sher then said to § 87(2)(b) “I’m giving you a lawful order and you have to follow it, otherwise you will be arrested.” Sgt. Austin stated that he informed § 87(2)(b) that if he refused to provide the information requested by PO Sher, § 87(2)(b) would be placed under arrest.

An officer may threaten to arrest an individual if that individual is engaging in conduct which constitutes criminal activity for which that person can be placed under arrest. Police Department v. Grossman, (Oct. 2000) [encl. a1-18]. A person is guilty of obstructing governmental administration when he/she “intentionally obstructs, impairs or perverts the administration of law or other governmental function...by means of intimidation, physical force or interference.” Penal Law §195.05 (Criminal Law Handbook of New York, 2013) [encl. b1].

§ 87(2)(g)

§ 87(2)(g)

• § 87(4-b), § 87(2)(g)

Team: ___4___

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date